

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

MUR: 7216
DATE FILED: February 10, 2017
DATE OF NOTIFICATION: February 15, 2017
LAST RESPONSE RECEIVED: March 30, 2017
DATE ACTIVATED: June 9, 2017

EARLIEST SOL: January 1, 2022
LATEST SOL: March 31, 2022
ELECTION CYCLE: 2018

COMPLAINANT: Ben LaGarde

RESPONDENT: Concerned Constituents Action Group f/k/a
Costello Constituent Action Group

**RELEVANT STATUTES
AND REGULATIONS:** 52 U.S.C. § 30101(4)(A), (8)(A), (9)(A)
52 U.S.C. § 30102
52 U.S.C. § 30103
52 U.S.C. § 30104
52 U.S.C. § 30120
11 C.F.R. § 100.22
11 C.F.R. § 100.26
11 C.F.R. § 110.11

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

Complainant alleges that Costello Constituent Action Group ("CCAG"),¹ a "political organization," violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by failing to register as a political committee, appoint a treasurer, and include disclaimers on

¹ In its response, CCAG states that it has changed its name to "Concerned Citizens Action Group," but later in the response refers to itself as "Concerned Constituents Action Group." Resp. at 1, 4. The affidavit submitted by Tammy Harkness, who avers that she has been involved with CCAG since its inception, also refers to the group as "Concerned Constituents Action Group." See Harkness Aff. ¶ 3. However, CCAG's name is spelled out on its website and social media pages as "Concerned *Constituent* Action Group" (emphasis added). See <http://www.ccag-d6.com/make-your-voice-heard>; https://twitter.com/CCAG_District6; <https://www.facebook.com/ccagd6>.

1 communications, and also by using Costello's name in the name of the organization.² Based on
2 the available record, we recommend that the Commission find no reason to believe that CCAG
3 violated the Act and close the file.

4 II. FACTUAL BACKGROUND

5 Congressman Ryan Costello represents the Sixth District of Pennsylvania in the United
6 States House of Representatives, and is a candidate for reelection in 2018. According to the
7 Complaint, CCAG began organized political activities after the 2016 Presidential election, with a
8 mission to "resist the dismantling of environmental and societal protections."³ Complainant also
9 alleges that CCAG specifically targets Costello and the policies of President Donald Trump by
10 organizing protests throughout Costello's district.⁴ Complainant alleges that CCAG conducts its
11 political activities primarily through a website, Facebook, Twitter, and an email list.⁵ The
12 Complaint maintains that CCAG does not identify individuals on its website who operate the
13 organization, it discloses no physical address on the website, and it anonymously registered its
14 Internet domain name.⁶

15 CCAG denies that it is a political committee under the Act.⁷ According to an affidavit
16 from Tammy Harkness, an individual involved with CCAG since its inception, CCAG was
17 formed in January 2017, it is a "loosely affiliated non-partisan idea network" of Sixth District
18 residents, and it encourages citizens to communicate with their representative, Costello, through

² Compl. at 1.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 2.

⁷ Resp. at 2.

1 letters, phone calls, visits, and rallies.⁸ Harkness avers that CCAG has taken no position on any
2 candidate running for federal office.⁹ The information on CCAG's website, Facebook page, and
3 Twitter account focuses on issues and legislation, such as the environment, immigration, and the
4 Affordable Care Act, and on organizing rallies and demonstrations to urge that Costello support
5 their views.¹⁰

6 CCAG provided an itemized list of disbursements as of March 31, 2017, totaling
7 \$1,464.50, of which \$1,149.00 was disbursed to rent an auditorium for a town hall meeting.¹¹
8 CCAG asserts that this meeting and other events, such as weekly rallies, communicated
9 constituent opinions and questions to Costello.¹² The remaining \$315.50 was disbursed for
10 website costs, a Google account, a Post Office box, a domain name, contact information cards,
11 and meeting space in a library.¹³ CCAG asserts it has no organized system to solicit and retain
12 funds; it merely pays expenses as they occur.¹⁴ CCAG identifies four individuals who paid for
13 most of the expenses, but does not identify who paid to rent the auditorium.¹⁵

⁸ Resp. at 1, Harkness Aff. Based upon a review of the records of the Commonwealth of Pennsylvania's Department of State and a search of other databases, it does not appear that CCAG is incorporated in Pennsylvania or in any other State.

⁹ Harkness Aff. ¶ 6.

¹⁰ See <http://www.ccag-d6.com/make-your-voice-heard>; <https://www.facebook.com/ccagd6>; https://twitter.com/CCAG_District6.

¹¹ See Resp. Ex. B.

¹² Resp. at 3.

¹³ See *id.*, Ex. B.

¹⁴ Resp. at 3. It does not appear that CCAG solicits donations through its website, Facebook page or Twitter page. See <http://www.ccag-d6.com/make-your-voice-heard>; <https://www.facebook.com/ccagd6>; https://twitter.com/CCAG_District6.

¹⁵ Resp. Ex. B.

III. LEGAL ANALYSIS

A. Political Committee Status

A political committee is "any committee, club, association, or other group of persons" that receives aggregate contributions or makes aggregate expenditures in excess of \$1,000 during a calendar year.¹⁶ Contributions are defined as any gift, subscription, loan, advance or deposit of money or anything of value, made by any person for the purpose of influencing any election for Federal office.¹⁷ Similarly, expenditures are defined as any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office.¹⁸ Political committees are required to register with the Commission and meet organizational and recordkeeping requirements, including the appointment of a treasurer and the filing of periodic disclosure reports.¹⁹

The available information supports CCAG's assertion that it is not a political committee as defined in the Act, and thus, it is exempt from the Act's requirements and prohibitions.²⁰ CCAG expressly denies that it takes positions on federal candidates,²¹ and there is no information to the contrary. CCAG states that as of March 31, 2017, it had spent \$1,464.50, of which \$1,149 was rent for a space to hold a town hall meeting to express its views on issues.

¹⁶ 52 U.S.C. § 30101(4)(A). Notwithstanding the threshold for contributions and expenditures, an organization will be considered a political committee only if its "major purpose is Federal campaign activity (*i.e.* the nomination or election of a Federal candidate)." See Political Committee Status: Supplemental Explanation and Justification, 72 Fed. Reg. 5595, 5597 (Feb. 7, 2007); *Buckley v. Valeo*, 424 U.S. 1, 79 (1976); *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 262 (1986).

¹⁷ 52 U.S.C. § 30101(8)(A).

¹⁸ 52 U.S.C. § 30101(9)(A).

¹⁹ 52 U.S.C. §§ 30102, 30103, 30104.

²⁰ Resp. at 2. CCAG contends that its major purpose is issue-based advocacy not the nomination or election of a candidate, and has focused on issues, such as health care and immigration. *Id.*

²¹ Harkness Aff. ¶ 6.

1 Because the available information indicates that the town hall meeting involved the expression of
2 opinions on issues, and not advocacy for the election or defeat of any candidate, the payment
3 does not appear to constitute an expenditure.²² A review of CCAG's website and social media
4 since March 31, 2017, does not indicate that it has engaged in activity constituting expenditures
5 exceeding \$1,000.

6 Therefore, we recommend that the Commission find no reason to believe that CCAG
7 violated 52 U.S.C. §§ 30102 or 30103 by failing to register as a political committee and appoint
8 a treasurer.

9 **B. Disclaimers**

10 All public communications by any person that expressly advocate the election or defeat
11 of a clearly identified candidate, or solicit contributions, must include a disclaimer as set forth in
12 the Act and Commission regulations.²³ A political committee's publicly available website must
13 also contain a disclaimer.²⁴ A public communication is a communication by means of any
14 broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility,
15 mass mailing, or telephone bank to the general public or any other type of general public
16 political advertising.²⁵ The term "general public political advertising" shall not include
17 communications over the Internet, except for communications placed for a fee on another

²² See *Buckley v. Valeo*, 424 U.S. 1, 44, 80 (1976); 11 C.F.R. § 100.22.

²³ 11 C.F.R. § 110.11(a)(2), (a)(3). See also 52 U.S.C. § 30120 and 11 C.F.R. § 100.22.

²⁴ 11 C.F.R. § 110.11(a)(1).

²⁵ 11 C.F.R. § 100.26.

1 person's website.²⁶

2 CCAG is not a political committee under the Act, it communicates through its website
3 and other social media, and it does not appear to have placed any communications on another
4 person's website for a fee nor engaged in any other type of public communication. Accordingly,
5 there is no basis for concluding that CCAG violated the disclaimer provisions. Therefore, we
6 recommend that the Commission find no reason to believe that CCAG violated 52 U.S.C.
7 § 30120 by failing to include disclaimers on communications.

8 **C. Use of Candidate Name**

9 A political committee which is not an authorized committee shall not include the name of
10 any candidate in its name.²⁷ Since it appears that CCAG is not a political committee, there is no
11 basis for concluding that CCAG violated this prohibition.²⁸ Therefore, we recommend that the
12 Commission find no reason to believe that CCAG violated 52 U.S.C. § 30102 by including the
13 name of a candidate in its name.

14 **IV. RECOMMENDATIONS**

- 15 1. Find no reason to believe that Concerned Constituents Action Group f/k/a
16 Costello Constituent Action Group violated 52 U.S.C. §§ 30102, 30103 or 30120;
17
18 2. Approve the attached Factual and Legal Analysis;
19
20 3. Approve the appropriate letters; and

²⁶ *Id.* If the public communication is not authorized by a candidate or an authorized political committee, the disclaimer shall clearly state the name and permanent street address, telephone number and World Wide Web address of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee. 52 U.S.C. § 30120 and 11 C.F.R. § 110.11(b).

²⁷ 52 U.S.C. § 30102(e)(4).

²⁸ An organization that is not a political committee that uses a candidate's name in its name is subject to another provision of the Act, 52 U.S.C. § 30124(b), which prohibits any person from fraudulently misrepresenting that the person is speaking, writing or acting for or on behalf of any candidate or political party or employee or agent thereof for the purpose of soliciting contributions or donations. This provision, however, is not applicable in this matter. Further, CCAG states that, as a courtesy to Costello, it changed its name to Concerned Constituents Action Group. Resp. at 4.

4. Close the file.

Lisa J. Stevenson
Acting General Counsel

Kathleen M. Guith
Associate General Counsel for Enforcement

9.7.17

Date

Stephen Gura
Stephen A. Gura
Deputy Associate General Counsel

Mark Allen ^{by RAL}
Mark Allen
Assistant General Counsel

Delbert K. Rigsby
Delbert K. Rigsby
Attorney

Attachment

Factual and Legal Analysis

17044432418

1 **FEDERAL ELECTION COMMISSION**

2
3 **FACTUAL AND LEGAL ANALYSIS**

4
5 RESPONDENT: Concerned Constituents Action Group f/k/a
6 Costello Constituent Action Group

MUR 7216

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8 **I. INTRODUCTION**

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10 organization," violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by
11 failing to register as a political committee, appoint a treasurer, and include disclaimers on
12 communications, and also by using Costello's name in the name of the organization.² Based on
13 the available record, the Commission found that there is no reason to believe that CCAG violated
14 the Act.

15 **II. FACTUAL BACKGROUND**

16 Congressman Ryan Costello represents the Sixth District of Pennsylvania in the United
17 States House of Representatives, and is a candidate for reelection in 2018. According to the
18 Complaint, CCAG began organized political activities after the 2016 Presidential election, with a
19 mission to "resist the dismantling of environmental and societal protections."³ Complainant also
20 alleges that CCAG specifically targets Costello and the policies of President Donald Trump by
21 organizing protests throughout Costello's district.⁴ Complainant alleges that CCAG conducts its

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10 candidate running for federal office.⁹ The information on CCAG’s website, Facebook page, and
11 Twitter account focuses on issues and legislation, such as the environment, immigration, and the
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15 \$1,464.50, of which \$1,149.00 was disbursed to rent an auditorium for a town hall meeting.¹¹

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15 loan, advance, deposit, or gift of money or anything of value, made by any person for the

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¹⁷ 52 U.S.C. § 30101(8)(A).

1 purpose of influencing any election for Federal office.¹⁸ Political committees are required to
2 register with the Commission and meet organizational and recordkeeping requirements,
3 including the appointment of a treasurer and the filing of periodic disclosure reports.¹⁹

4 The available information supports CCAG's assertion that it is not a political committee
5 as defined in the Act, and thus, it is exempt from the Act's requirements and prohibitions.²⁰

6 CCAG expressly denies that it takes positions on federal candidates,²¹ and there is no
7 information to the contrary. CCAG states that as of March 31, 2017, it had spent \$1,464.50, of
8 which \$1,149 was rent for a space to hold a town hall meeting to express its views on issues.
9 Because the available information indicates that the town hall meeting involved the expression of
10 opinions on issues, and not advocacy for the election or defeat of any candidate, the payment
11 does not appear to constitute an expenditure.²² A review of CCAG's website and social media
12 since March 31, 2017, does not indicate that it has engaged in activity constituting expenditures
13 exceeding \$1,000.

14 Therefore, the Commission found that there is no reason to believe that CCAG violated
15 52 U.S.C. §§ 30102 or 30103 by failing to register as a political committee and appoint a
16 treasurer.

¹⁸ 52 U.S.C. § 30101(9)(A).

¹⁹ 52 U.S.C. §§ 30102, 30103, 30104.

²⁰ Resp. at 2. CCAG contends that its major purpose is issue-based advocacy not the nomination or election of a candidate, and has focused on issues, such as health care and immigration. *Id.*

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1 **B. Disclaimers**

2 All public communications by any person that expressly advocate the election or defeat
3 of a clearly identified candidate, or solicit contributions, must include a disclaimer as set forth in
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8 political advertising.²⁵ The term "general public political advertising" shall not include
9 communications over the Internet, except for communications placed for a fee on another
10 person's website.²⁶

11 CCAG is not a political committee under the Act, it communicates through its website
12 and other social media, and it does not appear to have placed any communications on another
13 person's website for a fee nor engaged in any other type of public communication. Accordingly,
14 there is no basis for concluding that CCAG violated the disclaimer provisions. Therefore, the
15 Commission found that there is no reason to believe that CCAG violated 52 U.S.C. § 30120 by
16 failing to include disclaimers on communications.

²³ 11 C.F.R. § 110.11(a)(2), (a)(3). *See also* 52 U.S.C. § 30120 and 11 C.F.R. § 100.22.

²⁴ 11 C.F.R. § 110.11(a)(1).

²⁵ 11 C.F.R. § 100.26.

²⁶ *Id.* If the public communication is not authorized by a candidate or an authorized political committee, the disclaimer shall clearly state the name and permanent street address, telephone number and World Wide Web address of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee. 52 U.S.C. § 30120 and 11 C.F.R. § 110.11(b).

C. Use of Candidate Name

A political committee which is not an authorized committee shall not include the name of any candidate in its name.²⁷ Since it appears that CCAG is not a political committee, there is no basis for concluding that CCAG violated this prohibition.²⁸ Therefore, the Commission found that there is no reason to believe that CCAG violated 52 U.S.C. § 30102 by including the name of a candidate in its name.

²⁷ 52 U.S.C. § 30102(e)(4).

²⁸ An organization that is not a political committee that uses a candidate's name in its name is subject to another provision of the Act, 52 U.S.C. § 30124(b), which prohibits any person from fraudulently misrepresenting that the person is speaking, writing or acting for or on behalf of any candidate or political party or employee or agent thereof for the purpose of soliciting contributions or donations. This provision, however, is not applicable in this matter. Further, CCAG states that, as a courtesy to Costello, it changed its name to Concerned Constituents Action Group. Resp. at 4.